IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.663 OF 2005
(For Leave to Appeal)

The State of Maharashtra Appellant

vs.

Vishwanath @ Vishnu Phakira Sangale Respondent

Smt.U.V.Kejariwal, APP for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 3rd February 2005

P.C.

Heard Smt.U.V.Kejariwal, the learned APP and perused the judgment dated 11th February 2004 passed by the Sessions Judge, Raigad. By the said judgment the accused-respondent has been acquitted of the offence punishable under Section 302 of the Indian Penal Code.

2. Admittedly, there is no direct evidence led by the prosecution. The prosecution heavily relied upon the evidence pertaining to (i) motive; (ii) last seen and (iii) recovery of skull, wrist watch and driving licence of the deceased at the instance of the accused.

3. As regards the motive, the learned trial Judge held that there was nothing to establish that there was

illicit relationship between the deceased and the wife of the accused. Prosecution witness Shivaji (brother of the deceased) did not speak a word about Ganesh having illicit relation with the wife of Vishnu. The deposition of Rambhau was found to be not trustworthy. The learned APP could not show anything to the contrary.

4. As regards the circumstance that Ganesh and accused were last seen together, the prosecution examined Dilip Sangale and Munshi Shaikh. Both these witnesses did not support the prosecution case. The learned trial Judge cannot be said to have erred in discarding that circumstance.

5. Now coming to the recovery aspect, the learned trial Judge held that that by itself does not sufficiently establish the guilt of the accused. In a given case, the recovery based on disclosure statement of the accused may be clinching, but in so far as the present case is concerned the learned APP before us admitted that the prosecution was not able to establish that the skull discovered at the instance of the accused was that of deceased Ganesh.

6. Thus, we find that the view taken by the learned Sessions Judge is plausible and reasonable warranting no interference.

7. No case for grant of leave is made out.

8. Criminal application for leave to appeal is rejected.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)